

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

**In the Matter of:**

**PAUL A. CARR**

FAA Order No. 98-8

Served: May 4, 1998

Docket No. CP96NM0106

**ORDER GRANTING MOTION TO MODIFY**  
**FAA ORDER NO. 98-2**

In FAA Order No. 98-2, the Administrator assessed a \$2,000 civil penalty against Respondent Paul Carr for multiple violations of the Hazardous Materials Regulations.

In the Matter of Paul Carr, FAA Order No. 98-2 (March 12, 1998). At the conclusion of the decision and order, it was stated in footnote 27 as follows:

Unless Respondent files a petition for review with a Court of Appeals of the United States within 60 days of service of this decision (under 49 U.S.C. § 46110), this decision shall be considered an order assessing civil penalty. See 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2) (1997).

*Id.*, at 16 n.27. Complainant has petitioned for modification of the decision, arguing that footnote 27 should be deleted because 49 U.S.C. § 46110, which provides for review by a United States Court of Appeals, does not apply to cases brought under the Federal hazardous materials transportation statute.<sup>1</sup>

Complainant's petition for modification is granted. It is provided in 49 U.S.C. § 46301(g) that an order imposing a civil penalty may be reviewed judicially only under 49 U.S.C. § 46110. However, 49 U.S.C. § 46110 specifies that it applies only to orders

---

<sup>1</sup> 49 U.S.C. §§ 5101-5127.

issued under Title 49, Subtitle VII, Part A (entitled "Air Commerce and Safety.")

Complainant did not bring this civil penalty action under Title 49, Subtitle VII, Part A, but instead brought this action under 49 U.S.C. § 5123. Hence, as Complainant argues in its petition for modification, 49 U.S.C. § 46110 does not apply in this matter, and as a result, the appeal rights provided in footnote 27 were in error. See In the Matter of Midtown Neon Sign Corporation, FAA Order No. 97-1 (January 8, 1997).

Consequently, it is ordered that footnote 27 of FAA Order No. 98-2 at 16 be deleted.

JANE F. GARVEY, ADMINISTRATOR  
Federal Aviation Administration



VICKI S. LEEMON<sup>2</sup>  
Manager, Adjudication Branch

Issued this 1<sup>st</sup> day of May, 1998.

---

<sup>2</sup> Issued under authority delegated to the Chief Counsel and the Assistant Chief Counsel for Litigation by Memorandum dated October 27, 1992, under 49 U.S.C. § 322(b) and 14 C.F.R. § 13.202 (see 57 Fed. Reg. 58,280 (1992)) and redelegated by the Assistant Chief Counsel for Litigation to the Manager, Adjudication Branch, by Memorandum dated August 6, 1993.